

### **REMARKS**

Support for the amendments to the Claims can be found in the application as originally filed. No new matter is added.

Claims 1 through 64 have previously been presented in this application.

Claims 1 through 17 are previously cancelled;

Claims 18 through 33 are withdrawn from examination by the Examiner;

Claims 34 through 42 are previously cancelled;

Claim 43 through 49 are withdrawn from examination by the Examiner;

Claims 50, 54, 55, 57, 59, 60, 61, 62 and 63 are amended herein.

Thus, Claims 50 through 64 are presently before the Examiner in this application.

#### **Interview Summary:**

The undersigned greatly appreciates the Examiner's courtesy in granting a telephone interview on 01/28/2008 wherein the meaning of the term "free base" and the status of the withdrawn claims was discussed.

#### **Rejection under 35 U.S.C. § 112, second paragraph:**

The Examiner has rejected claims 59-63 as being indefinite because the Examiner considers that it is unclear what is meant by the term "as a free base." Applicants respectfully point out that the term "as a free base" would be understood by a chemist as meaning that the compound was not in the form of a salt, but rather was in the form of a base. However, notwithstanding the foregoing, Applicants have cancelled the objected-to language in the amended claims presented herein. Additionally, Applicants have similarly amended claims 50, 54, 55 and 57 to distinctly claim the invented subject matter. The amendments presented herein in no way limit the scope of the claimed subject matter.

#### **Obviousness Double Patenting:**

The Examiner has maintained a provisional rejection of claims 50-64 under the judicially created doctrine of obviousness-type double patenting over the claims of co-pending application 10/572,778.

Applicants have previously requested that the requirement for a terminal disclaimer be held in abeyance until allowable claims had been agreed. Applicants respectfully suggest that the

claims as amended herein are allowable now and enclose a terminal disclaimer to overcome the above-mentioned provisional rejection.

**Withdrawn Claims:**

Applicants respectfully request that the Examiner cancel withdrawn claims 18 through 33 inclusive and 43 through 49 inclusive by Examiner's amendment. Applicants reserve the right to prosecute claims to the withdrawn subject matter in future continuation applications.

**Fees:**

Any necessary claim or other fees are to be charged to and any refunds credited to deposit account 26-0166.

**Conclusion:**

Applicants respectfully submit that the claims as presented are in condition for allowance and solicit prompt issuance of a Notice of Allowance and Issue Fee Due.

Respectfully submitted,

Dated: February 4, 2008

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